

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NOS. 5896, 5897
& 5898 OF 1996.

WITH
CIVIL APPLICATION NO. 4489 OF 1997
IN
SPECIAL CIVIL APPLICATION No.5898 OF 96

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
MISS JUSTICE R.M.DOSHIT

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

REVUBHA DAJIBHAI JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR PRASHANT G DESAI for Petitioner
MRS AMEE YAGNIK, AGP for Res. No. 1 TO 3
MR JR NANAVATI for MR AR THAKKAR for Res.No.4.

CORAM : MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT

ORAL JUDGEMENT (PER : CALLA J)

Special Civil Application No. 5896/96 relates to a land situated in village-Jakhad, Taluka-Lalpur, District-Jamnagar, bearing Survey NO. 77/1 Paiki, admeasuring 4-Acres. Special Civil Application No. 5897/96 relates to the land situated in village-Jakhad, Taluka-Lalpur, District-Jamnagar, bearing Survey No. 77/1 Paiki, admeasuring 4-Acres. Special Civil Application No. 5878/96 where the concerned land is land situated in village-Jakhad, Taluka-Lalpur, District-Jamnagar, bearing Survey No. 77, Paiki, admeasuring 9-Acres-25 Gunthas. All these Special Civil Applications are based on identical facts, giving rise to common question and therefore, we propose to decide all these three Special Civil Applications by this common judgment and order.

In all these three petitions, the petitioners have come with the case that the land in question has not been acquired under the provisions of the Land Acquisition Act, nor any Notification has been issued either under section 4 or 6 of the Land Acquisition Act for the purpose of acquiring the land and the respondents are trying to disturb the possession of the petitioners by taking law into their own hands and by bringing undue pressure upon them and that the respondent no.4 has erected a wire-fencing around the lands of the petitioners while they are cultivating the lands in question and that they had not executed any writing in favour of the respondent no.4 nor have they delivered the possession of the land to the respondent no.4.

On the basis such averments, a direction has been sought that they may not be dispossessed from the lands in question. It appears from the proceedings drawn in this case that on 13th August, 1996, notice returnable was issued and on the same day, status-quo as on that date was ordered to be maintained by both the sides. Later on, by a detailed order passed by the Division Bench on 15th December, 1997, the ad-interim order was vacated and the matters were directed to be placed for final hearing in the week commencing from 2nd February, 1998. We have heard the learned counsel who have appeared and have also gone through the affidavits in reply, rejoinders and further affidavits etc. as have been filed in these matters by the parties. The learned counsel appearing for the respondents have pointed out

that apart from the fact that these Special Civil Applications are based on wholly bald and vague averments, not supported by any documents; these petitions involve serious and integrated disputed questions of facts which can not be gone into in Special Civil Application under Articles 226 and 227 of the Constitution of India. The affidavit in reply dated 9th October, 1996, which has been filed by the concerned Land Acquisition Officer shows that the land being Survey No. 77 of village Jakhad of Lalpur Taluka is Government Kharaba waste land admeasuring 300 Hectors, and out of the said land, the Government has allotted the land under the provisions of the Waste Land Resolution. It has been further stated in paragrpah-4 of this affidavit in reply that the petitioner has not produced any map with his petition showing the exact boundary marks of his land or Survey No. 77/1 Paiki, while the area of land of Survey No. 77 is more than 300 Hectors, the exact location of lands claimed by the petitioner can not be traced out. The petitioner's claim has been described to be presumptive as no map showing the exact location out of the land of Survey No. 77 has been produced, nor any documents have been produced to prove the position of the land in particular area of Survey No. 77 for agricultural purposes under the new tenure. It is also the case of the respondents nos. 1 to 3 that the respondent no.4-Company wanted some portion of this land bearing Survey No.77 and as the land was Government waste land, and the same was not required to be acquired under the Land Acquisition Act, besides the other land which was acquired for the respondent no.4-Company, this Government land out of Survey No. 77 was granted by the Government to the respondent No.4-Company and since it was a land under the scheme of allotment of waste lands, no proceeding under the Land Acquisition Act was required in respect of this land which was identified as Government waste land and accordingly the possession of the land was given to the Company. After this affidavit in reply, an affidavit in rejoinder dated 30th October, 1996 has been filed and along with the said affidavit in rejoinder also, no document whatsoever has been filed. The affidavit dated 18th January, 1997, has been filed on behalf of the respondent No.4 Company which is an affidavit in detail and it has been given out therein that the land was needed for establishment of a Refinery and it has also been stated that Government of Gujarat has issued the Notification dated 14th November, 1994 under section 4 of the Land Acquiisition Act and further action taken thereafter.

At this stage, Mr. Pranav Desai, while inviting

attention of the court to the further affidavit dated 15th March, 1998, filed in Special Civil Application No. 5898/96, submitted that the petitioners had come to know that the Collector, Jamnagar, had addressed a letter to the Revenue Department of the State Government at Gandhinagar being letter bearing Reference No. JA-MA-NA-3494/97, dated 9th September, 1997 informing that the said lands belong to the respective petitioners under reference and the respective petitioners are owners of the respective lands and it was also stated in the said letter of the Collector, Jamnagar, that the amount if any received by the State Government, is required to be returned. It is stated in this affidavit that the Collector, Jamnagar, District had held detailed inquiry and as a result of this inquiry, it is revealed that the said lands were of the ownership of the petitioners and that the same were wrongly given by the State Government to the company-respondent no.4. It is further stated that the Revenue Department of the State Government has issued a letter some time in March, 1998, to the Collector, Jamnagar District. From the pleadings of the parties in this petition, it is clear that there are disputed questions of facts which can not be gone into in these proceedings under section 226 and 227 of the Constitution of India. However, in the context of the aforesaid affidavit dated 15th March, 1998, filed by one Kheraj Karshan Harijan-petitioner in Special Civil Application no. 5896/96, the averments of which have been referred to above, Mrs. Amee Yagnik has produced the Xerox copy of the letter dated 20th August, 1998, sent to some of the petitioners i.e. Kheraj Karshan Harijan and two others. The contents of this letter dated 20th August, 1998 read with other documents on record show that the Government is till examining the grievances raised by the petitioners and the learned AGP has candidly stated that the concerned authorities, particularly the Collector, Jamnagar, would verify the factual position subject to the production of necessary material before him by the concerned petitioner from whom the information and material have been called for by the Deputy Collector, Jamnagar's letter dated 20th August 1998. Mr. Nanavati has also stated that if any such inquiry is undertaken by the Collector for examining the grievances of the petitioners, the Company would co-operate and assist in this inquiry. In such a fact situation, instead of dismissing the petition on the ground of involvement of disputed questions of facts, we consider it appropriate to direct the Collector, Jamnagar, to hold a proper inquiry in this regard on the representation which the aggrieved petitioners may file before him along with necessary details and the

documentary evidence which may be in their possession. In case the Collector, Jamnagar, after proper factual inquiry and after hearing the company-respondent no.4, comes to the conclusion that any part of the land has been given to the Company which infact belonged to any of the petitioners, he may take such appropriate steps to get the petitioners compensated in accordance with law for that purpose, because Mr. Nanavati has submitted that the respondent-Company has already paid the due amount of compensation at the market value to the Government. Mrs. Amee Yagnik submits that the Collector shall complete this inquiry and pass the final orders within a period of three months and in case any order favourable to the petitioners is passed, the due amount of compensation shall also be paid to the respective petitioners within one month thereafter. This course of action may be followed accordingly.

With the observations and directions as aforesaid, these three Special Civil Applications are hereby disposed of and the Rule issued in each of the three Special Civil Applications is hereby discharged. In view of the order passed above, Civil Application no.4489/97 stands disposed of.

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JOSHI